IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORIGINAL SIDE

APPEAL NO.1011 OF 2005
IN
SUMMONS FOR JUDGMENT NO.931 OF 2004
IN
SUMMARY SUIT NO.2558 OF 2004

1. M/S.Zehra and sons & ors. Appellants
vs.
Rusy H. Dadyburjor Respondent

Mr.N.N.Vaishnava i/b.M/s.N.N.Vaishnava & Co. for the appellant.

Mr.J.R.Trivedi with Mr.T.H.Bhatt for the respondent.

CORAM : R.M. LODHA &
D.G. KARNIK, JJ.

DATED : 15th December 2005

P.C.

Heard Mr.N.N.Vaishnava, the learned counsel for the appellant and Mr.J.R.Trivedi, the learned counsel for the respondent.

2. Admit.

3. Mr.T.H.Bhatt, advocate waives service for the respondent.

4. Appeal is heard finally at this stage.

5. The two documents which are not in dispute were

perused by us. One of these documents is an agreement dated 9th March 2001 between the parties where the plaintiff along with his wife agreed to transfer the tenancy rights in respect of the ground floor at 92, Bhivandi House, August Kranti Marg, Mumbai to the defendant for a consideration of Rs.50 lacs. As per the said agreement, the plaintiff and his wife agreed that the tenancy rights shall be transferred in favour of the purchasers-the defendants within six months.

6. The other agreement is dated 10th March 2001 which records that the defendants purchased the household furniture, curios and appliances from the plaintiff for a consideration of Rs.10 lacs. All these articles which were purchased by the defendants for a consideration of Rs.10 lacs were lying in the flat in respect of which an agreement was already entered into between the parties for transfer of tenancy rights.

7. The case of the plaintiff is founded on two dishonoured cheques. According to him, one cheque of Rs.10 lacs was given by the defendant to the plaintiff towards consideration of the household articles and the other cheque of Rs.10 lacs was given for transfer of the possession of the garage.

8. On the other hand, the case of the defendant is that

these two cheques of Rs.10 lacs were given by the defendant to the plaintiff towards consideration of transfer of tenancy rights under the agreement dated 9th March 2001. The facts that have been noticed by us above clearly show that the defendants have been able to raise triable issues and the learned trial Judge was not justified in holding that there is no defence in the case of the defendant.

9. In our considered view, unconditional leave has to be granted to the defendant.

10. We, accordingly, set aside the order dated 10th October 2005 in so far as the trial Judge granted conditional leave to the defendant on deposit of sum of Rs.10 lacs. The defendant is granted unconditional leave. The Suit shall stand transferred to the List of Commercial Causes and be proceeded with accordingly.

11. No costs.

(R. M. LODHA, J.)

(D. G. KARNIK, J.)